

EXHIBIT B

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	No. CR 15-00264 LHK
)	
Plaintiff,)	UNITED STATES' NOTICE PURSUANT TO
)	404(b) OF THE FEDERAL RULES OF EVIDENCE
v.)	
)	
JOSEPH SHAYOTA,)	
ADRIANA SHAYOTA,)	
JUSTIN SHAYOTA,)	
WALID JAMIL, a/k/a Wally Jamil,)	
RAID JAMIL, a/k/a Brian Jamil,)	
KEVIN ATTIQ,)	
FADI ATTIQ, a/k/a Fred Attiq,)	
LESLIE ROMAN,)	
MARIO RAMIREZ, and)	
CAMILO RAMIREZ,)	
)	
Defendants.)	

The United States of America, by and through its attorneys, Brian J. Stretch, United States Attorney for the Northern District of California, Matthew A. Parrella and Susan Knight, Assistant United States Attorneys, hereby provide notice of its intent to introduce evidence of crimes, wrongs, or

other acts pursuant to Rule 404(b) of the Federal Rules of Evidence to prove the defendants' knowledge, intent, preparation, plan, and absence of mistake or accident. The general nature of such evidence, and the individual defendant(s) to which each circumstance applies, is as follows. The government has included deposition pages and civil action case numbers as an aide to locating references to the incidents. The government is not limited to that evidence at trial will supplement those references with other forms of evidence.

I. EQUAL, SPLENDA, AND UNCLE BEN'S RICE

Joseph Shayota
Adriana Shayota
Walid Jamil
Raid Jamil
Mario Ramirez and
Camilo Ramirez

These defendants engaged in a scheme to divert, counterfeit, and repackage Equal, Splenda, and Uncle Ben's Rice. These products were purchased at below United States' market prices and intended for sale outside of the United States. The products were then repackaged using counterfeited packing and sold to wholesalers throughout the United States. *See* Deposition of Joseph Shayota, Bates No. 0019159-0019432; Deposition of Adriana Shayota, Bates No. 0018799-0019070; Deposition of Walid Jamil, Bates No. 0033202-0033454; Deposition of Walid Jamil, Bates No. 0021511-0021769; FBI Interview of Mario Ramirez, Bates No. 5HR-000221, Deposition of Mario Ramirez, Bates No. 0015068-0015366 and Exh. 18 (22750, 22752); Deposition of Mario Ramirez, Bates No. 00012886-001306; Deposition of Camilo Ramirez, Bates No. 0007243.

II. TRUVIA

Walid Jamil
Raid Jamil and
Mario Ramirez

These defendants' engaged in a scheme to divert, counterfeit, and repackage Truvia, which was purchased at below United States' market prices intended for sale outside of the United States. It was then repackaged using counterfeited packing and then sold to wholesalers throughout the United States. *See* Deposition of Mario Ramirez, Bates No. 00012886-001306.

1 **III. MONSTER ENERGY DRINKS AND MARS CANDY**

2 **Joseph Shayota**
 3 **Adriana Shayota**
 4 **Kevin Attiq**
 Fadi Attiq

5 These defendants engaged in a scheme to divert Monster Energy drinks and Mars candy, which
 6 were purchased at below United States' market prices destined for sale outside of the United States. The
 7 products were sold in the United States. On June 11, 2011, Monster Energy, which is owned by Hansen
 8 Beverage Company, sued a subsidiary of Baja called Logistica Horizontal S.A. de C.V., a/k/a Baja
 9 Miller S.A. de C.V. in the United States District Court for the Southern District of California alleging
 10 that Baja Miller violated the terms of a distribution agreement entered into on October 15, 2004 by
 11 distributing Monster Products outside of Mexico. *See* Bates No. XXX, *Hansen Beverage Company v.*
 12 *Logistica Horizontal S.A. de C.V. a/k/a Baja Miller S.A. de C.V.*, No. 10-cv-1262 JAH/POR. On August
 13 25, 2010, Hansen Beverage Company dismissed its lawsuit against Logistica Horizontal S.A. de C.V.
 14 because the company agreed to submit the dispute to arbitration. *See* Bates No. 5HR-00211-002220,
 15 Notice of Voluntary Dismissal. *See also*, Deposition of Joseph Shayota, Bates No. 0019159-0019432;
 16 Deposition of Kevin Attiq, Bates No. 005533-005821; Deposition of Kevin Attiq, Bates No. 005179-
 17 005442; Deposition of Fadi Attiq, Bates No. 0004775-0005080.

18 **IV. WELCH'S AND MOTTS PRODUCTS**

19 **Joseph Shayota**
 20 **Adriana Shayota**

21 These defendants purchased the following products at below United States' market prices that
 22 were intended for sale outside of the United States. The products, including Welch's and Motts, were
 23 diverted and sold in the United States. *See* Deposition of Joseph Shayota, Bates No. 0019159-0019432.

24 **V. PILLSBURY PRODUCTS**

25 **Walid Jamil**

26 The defendant diverted numerous products, including Pillsbury products, that were intended to
 27 be sold in Mexico but were sold in United States. *See* Deposition of Walid Jamil, Bates No. 0021075-
 28 0021426.

VI. LIVING ESSENTIALS SETTLEMENT AGREEMENTS

A. Joseph Shayota Adriana Shayota

On October 26, 2012, Innovation Ventures, LLC, Living Essentials, LLC., and International IP Holdings LLC (“Living Essentials”) sued Joseph Shayota, Adriana Shayota, and Tradeway International, d/b/a Baja Exporting (“Baja Defendants”) in the United States District Court for the Eastern District of New York for, among other claims, federal trademark infringement, and federal copyright infringement related to Living Essentials’ trademarks and copyrighted material of 5-Hour ENERGY. *See Innovation Ventures, et al. v. Ultimate One Distributing Corp., et al.*, No. 12-cv-5354 (KAM). On November 7, 2013, Living Essentials and the Baja Defendants entered into a settlement agreement in which the Baja Defendants did not contest that Living Essentials owned all of the trademarks and copyrights rights relating to 5-Hour ENERGY and agreed to pay Living Essentials \$6,000,000. *See* Bates No. 5HR-002189-002201.

B. Leslie Roman

On November 30, 2012, Innovation Ventures, LLC, Living Essentials, LLC., and International IP Holdings LLC (“Living Essentials”) sued Leslie Roman in the United States District Court for the Eastern District of New York for, among other claims, federal trademark infringement, and federal copyright infringement related to Living Essentials’ trademarks and copyrighted material of 5-Hour ENERGY. The initial lawsuit was filed on October 26, 2012, and on December 28, 2012, Living Essentials filed a Seventh Amended Complaint to add Donna Roman and Flexopack. *See Innovation Ventures, et al. v. Ultimate One Distributing Corp., et al.*, No. 12-cv-5354 (KAM). On July 16, 2013, Living Essentials and Leslie Roman, Donna Roman, and Flexopack (“Flexopack Defendants”) entered into a settlement agreement in which the Flexopack Defendants did not contest that Living Essentials owned all of the trademarks and copyrights rights relating to 5-Hour ENERGY and agreed to pay Living Essentials \$426,030.53. *See* Bates No. 5HR-002202-002210.

C. Mario Ramirez Camilo Ramirez

On November 26, 2012, Innovation Ventures, LLC, Living Essentials, LLC., and International

IP Holdings LLC (“Living Essentials”) sued Mario Ramirez, Camilo Ramirez, MCR Printing and Packaging Corp., and MCR Innovations and Packaging Inc. (“MCR Defendants”) in the United States District Court for the Eastern District of New York for, among other claims, federal trademark infringement, and federal copyright infringement related to Living Essentials’ trademarks and copyrighted material of 5-Hour ENERGY. The initial lawsuit was filed on October 26, 2012, and on December 28, 2012, Living Essentials filed a Seventh Amended Complaint to add Naftaunited.com (part of the MCR Defendants). *See Innovation Ventures, et al. v. Ultimate One Distributing Corp., et al.*, No. 12-cv-5354 (KAM). On October 16, 2013, Living Essentials and the MCR Defendants entered into a settlement agreement in which the MCR Defendants did not contest that Living Essentials owned all of the trademarks and copyrights rights relating to 5-Hour ENERGY and agreed to pay Living Essentials \$625,000. *See* Bates No. 5HR-002177-002188.

**D. Kevin Attiq
Fadi Attiq**

On October 26, 2012, Innovation Ventures, LLC, Living Essentials, LLC., and International IP Holdings LLC (“Living Essentials”) sued Kevin Attiq, Fadi Attiq, and Dan Dee Company in the United States District Court for the Northern District of California for, among other claims, federal trademark infringement, and federal copyright infringement related to Living Essentials’ trademarks and copyrighted material of 5-Hour ENERGY. *See Innovation Ventures, LLC. et al v. Pittsburg Wholesale Grocers Inc., et al.*, No. 12-cv-5523 (WHA). On November 15, 2013, the Honorable William H. Alsup, United States District Judge for the Northern District of California, granted Living Essentials’ Motion to Change Venue to the Eastern District of New York. In March 2016, Kevin Attiq, Fadi Attiq, and the Dan Dee Company entered into a settlement agreement with Living Essentials.¹

VII. SUMMARY JUDGMENT

**Walid Jamil
Raid Jamil**

On March 31, 2016, the Honorable Kiyo A. Matsumoto granted in part Living Essentials’

¹ The subpoena for the settlement agreement is outstanding and the government will produce the agreement as soon as it receives it from Living Essentials.

1 Motion for Summary Judgment and Permanent Injunction. *See Innovation Ventures, et al. v. Ultimate*
2 *One Distributing Corp., et al.*, No. 12-cv-5354 (KAM) and *Innovation Ventures, LLC. et al v. Pittsburg*
3 *Wholesale Grocers Inc., et al.*, No. 13-cv-6397 (KAM). Specifically, Judge Matsumoto found Walid
4 Jamil and Raid Jamil, operating as Midwest Wholesale Distributors, willfully infringed on Living
5 Essentials' 5-Hour ENERGY trademarks and awarded Living Essentials \$10 million in damages and
6 attorneys' fees. The Court also found that Walid Jamil and Raid Jamil infringed on Living Essentials'
7 copyright and awarded Living Essentials \$75,000 in damages.

8 DATED: August 26, 2016

Respectfully submitted,

9 BRIAN J. STRETCH
10 United States Attorney

11 /s/
12 MATTHEW A. PARRELLA
13 SUSAN KNIGHT
14 Assistant United States Attorneys
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